

TITLE 312 NATURAL RESOURCES COMMISSION

Emergency Rule
LSA Document #09- **987** (E)

DIGEST

Temporarily amends provisions to assist with the implementation of IC 14-26-2 and 312 IAC 11-1 through 312 IAC 11-5. Adds provisions to govern the placement of a group pier within a public freshwater lake and incorporates a guidance document to assist with delineating riparian zones. Similar provisions formerly had application in LSA Document #08-933(E). Effective January 1, 2010.

SECTION 1. This document assists in the implementation of IC 14-26-2 and supplements 312 IAC 11-1 through 312 IAC 11-5.

SECTION 2. (a) Except as otherwise provided in this SECTION, the definitions contained in IC 14-8, IC 14-26-2, 312 IAC 1, and 312 IAC 11-2 apply throughout this document.

(b) Notwithstanding 312 IAC 11-2-11.5, "group pier" means a pier that provides docking space for any of the following:

- (1) At least five (5) separate property owners.**
- (2) At least five (5) rental units.**
- (3) An association.**
- (4) A condominium, cooperative, or other form of horizontal property.**
- (5) A subdivision or an addition.**
- (6) A conservancy district.**
- (7) A campground.**
- (8) A mobile home park.**
- (9) A club that has, as a purpose, the use of public waters for boating, fishing, hunting, trapping, or similar activities.**

SECTION 3. If a determination of riparian boundaries is reasonably required for the performance of functions under IC 14-26-2 and 312 IAC 11-1 through 312 IAC 11-5, the department (or the commission on administrative review) shall consider as guidance "Riparian Zones within Public Freshwater Lakes and Navigable Waters" published by the Legislative Services Agency at 20081210-IR-312080891NRA.

SECTION 4. (a) This SECTION supersedes 312 IAC 11-3-3.

(b) Except as provided in 312 IAC 11-3-1 and in this SECTION, a structure placed within the shoreline or water line of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this document.

(c) Except as provided in 312 IAC 11-4-7 and 312 IAC 11-5-2, a structure that is located on a public freshwater lake:

- (1) more than one hundred fifty (150) feet; and**
- (2) less than two hundred (200) feet;**

from the shoreline or water line requires a written license under IC 14-26-2, 312 IAC 11-1 through 312 IAC 11-5, this document, IC 14-15-7-3, and 312 IAC 5-4. The department may provide that the multiple licensing requirements of this subsection are satisfied with a single written license.

(d) Except as provided in 312 IAC 11-4-7 and 312 IAC 11-5-2, a structure that is located:

- (1) on a public freshwater lake; and
 - (2) not less than two hundred (200) feet from the shoreline or water line;
- does not require a license under IC 14-26-2, 312 IAC 11-1 through 312 IAC 11-5, and this document, but the structure does require a license under IC 14-15-7-3 and 312 IAC 5-4. Only a navigation aid or water recreation structure can be licensed under 312 IAC 5-4.

(e) The director or a delegate shall not issue a license under this document except upon a written determination that shows the following:

(1) The license, including conditions attached to the license, conforms to IC 14-26-2 and this document. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.

(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (f)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(f) An application for a license under this SECTION must include a description of the following:

(1) The structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2, 312 IAC 11-1 through 312 IAC 11-5, and this document.

(2) The real estate:

- (A) on which the structure would be located; or
- (B) that the structure would benefit.

(g) Examples of a structure that requires a written license under this document include the following:

- (1) A marina.
- (2) A group pier.
- (3) A new seawall or a seawall refacing.
- (4) An underwater beach.
- (5) A boat well excavation, construction, or fill.
- (6) A fish attractor.
- (7) A pier that is supported by a structure permanently mounted in, or affixed to, the bed of the lake.
- (8) A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:
 - (A) placed over a boat well constructed landward of the shoreline or water line; and
 - (B) constructed only after a permit is obtained to alter the shoreline or water line.

SECTION 5. (a) A written license under IC 14-26-2, 312 IAC 11-1 through 312 IAC 11-5, and this document is required to place a group pier within a public freshwater lake.

(b) A person must not place a group pier along or within the shoreline or water line of a public freshwater lake unless the person obtains a written license from the department under this SECTION.

(c) The applicant must demonstrate exercise of the license would not do any of the following:

- (1) Unreasonably impair the navigability of the public freshwater lake.**
- (2) Pose an unreasonable hazard to life or property.**
- (3) Violate the public rights described in IC 14-26-2-5.**
- (4) Interfere with the reasonable exercise of boating operations by the public.**
- (5) Interfere with the property interests of a landowner having property rights abutting the lake or rights to access the lake.**

(d) The department shall condition a license for a group pier or group piers so the placement, configuration, and maintenance:

- (1) Provide a reasonable buffer zone between the pier and:**

(A) the portion of the lake two hundred (200) feet from the shoreline or water line; and

(B) the riparian zone of adjacent property owners to provide for reasonable navigation by the adjacent property owner and by the public. Except as otherwise provided in this clause, the department shall require at least five (5) feet of clearance on both sides of a riparian line (for a total of ten (10) feet). The department may require as much as ten (10) feet of clearance on both sides of

a riparian line (for a total of twenty (20) feet), if based upon the opinion of a qualified professional that additional clearance is required for reasonable navigation. The department may approve an exception to this clause where adjacent riparian owners use a common pier along their mutual property line, and the purposes of this clause are satisfied by waters elsewhere within their riparian zones.

(2) Do not result in unreasonable traffic congestion in the immediate vicinity of the pier.

(3) Do not authorize structures which are likely to be hidden or obscured so as to pose a hazard to the public.

(4) Minimize disturbances to vegetation and sediments in close proximity to the shoreline or water line.

(5) Are unlikely to trap debris or redirect sediments or currents to cause erosion or sedimentation that is detrimental to navigation or to the property rights of other riparian owners.

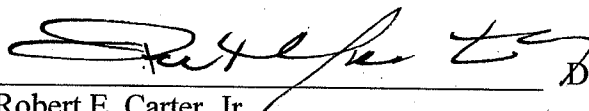
(6) Avoid causing or appearing to cause appropriation of public water unnecessary to the reasonable exercise of riparian rights. Any pier or piers must not be wider than fifty percent (50%) of the width of the applicant's shoreline or water line. As used in this subdivision, "width" is determined by the straight line formed

between the points located at intersections of the applicant's property lines with the shoreline or water line.

Rule Signature Page

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Agency: Natural Resources Commission
Subject: Public Freshwater Lake Group Piers

ADOPTED:

By:  Date: 12/15/2009
Robert E. Carter, Jr.
Director
Department of Natural Resources

ACCEPTED FOR FILING:

By: _____
TITLE 312 NATURAL RESOURCES COMMISSION
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